

QUESTION I - February 2010

PLEASE NOTE: QUESTION I was a "Multistate Performance Test" (MPT) and is not reproduced here. For additional information see: <http://www.ncbex.org/>.

QUESTION II - February 2010

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QUESTION III - February 2010

When Bob's children were little, he enjoyed making wooden toys for them. As his children grew, Bob decided to turn his hobby into his profession and started his own wooden toy manufacturing business out of his garage. He named his new business "Amazing Wooden Toys."

Bob took great pride in the wooden toys that he meticulously hand crafted. Bob's wooden toys were a big success. He sold them wholesale to stores all over New England, and he created a web site through which he sold them on a retail basis.

As Bob's business continued to grow, he decided that it was time to move the business from his garage to a much larger manufacturing facility. Around the same time, Bob's friend, Alice, offered to give Bob the \$100,000 he needed to buy the manufacturing equipment in return for a 25% ownership stake of the business and a 25% share of the profits. The only condition that Alice placed on the deal was that she didn't want any liability from the business - only a share of the profits. Bob readily agreed and they sealed the deal with a handshake. Neither party took any additional steps to formalize their relationship.

Soon after, Bob found the perfect location for the manufacturing facility and entered into a lease in the name of Amazing Wooden Toys. With Alice's \$100,000, Bob fully equipped the new manufacturing facility and started churning out wooden toys by the truck load.

Unfortunately, unbeknownst to Bob, one of his employees used a highly toxic glue when he assembled some of the toys and reports soon started coming in that children who chewed on the wooden toys were getting very sick. As word spread about the danger of Bob's toys, all orders ceased. As a result of these problems, Bob and Alice had a falling out and stopped talking to each other.

In the meantime, John, another friend of Bob's, suggested that they create and operate a wooden furniture business. Anxious to leave his troubles behind, Bob readily agreed and without consulting with Alice, Bob and John opened a new business, "New Furniture Company." Bob and John then proceeded to convert the toy manufacturing facility into a furniture manufacturing facility. Bob and John decided to formalize their business relationship by creating a limited liability company. After doing so, they began producing high-end wooden furniture and business was a huge success.

- 1. Before Bob joined with Alice, please describe in detail: (a) what type of business entity, if any, was the toy shop when Bob first opened “Amazing Wooden Toys,” and (b) what steps are necessary, if any, in creating that type of business entity.
- 2. Please describe in detail: (a) the difference between a general partnership and a limited partnership, (b) what steps Bob and Alice should have taken, if any, to create either of these types of partnerships, and (c) which type of partnership Bob and Alice most likely created under the facts described above.
- 3. Please describe in detail: (a) the difference between a limited liability company and a corporation, and (b) what steps Bob and John should have taken, if any, in creating their new business.
- 4. Assume that the parents of the children who got sick from chewing the toys have tort claims arising from the use of the toxic glue used to make the toys. Please explain in detail whether they may properly bring such tort claims against: (a) “Amazing Wooden Toys,” (b) Bob, (c) Alice, (d) John and/or (e) “New Furniture Company.”
- 5. Please describe in detail what claims, if any, that Alice may have against: (a) Bob, (b) John and/or (c) “New Furniture Company.”

QUESTION IV - February 2010

Allen, Barbara and Charlie are partners in the ABC law firm.

On Monday, January 4, 2010, Allen agrees to represent Yolanda in a criminal case charging her with receipt of a stolen snowmobile. Yolanda provides a check for \$5,000 to be deposited in the firm's lawyer trust account to cover costs of defense and fees that will be charged on an hourly basis in the course of the representation. Allen deposits the check in the firm's trust account, and immediately writes a check against the account to retain an expert witness on snowmobiles to help in the defense of Yolanda. Allen calls up the prosecutor—who won her last contentious trial against Allen—tells her that she is an idiot, and says that Allen is going to bury her in this case.

On Tuesday, Barbara receives an emergency call from Zelda. Zelda is married to Yolanda. Zelda tells Barbara that Yolanda has threatened Zelda. Barbara rushes to court with Zelda to obtain an emergency relief from abuse order. Yolanda is at the court waiting; Zelda had warned Yolanda that she would be seeking an order from the court.

Yolanda tells the judge she would never hurt Zelda. Yolanda also says that she doesn't understand why Barbara is there, because Allen is her lawyer. Barbara tells the judge that can't be true, because the firm has a conflict system that would have warned her before she took the case. Barbara neglects to tell the judge that the firm only updates its conflict system on Friday of each week.

Yolanda storms out of court before the end of the hearing. The judge then signs a relief from abuse order, and directs Barbara to arrange for service of the order. When Barbara returns to her

office, she learns that Yolanda had retained Allen on Monday. Worried about Zelda's safety, Barbara arranges for service of the abuse order on Yolanda.

On Wednesday, Charlie receives a notice from the bank that the \$5,000 check from Yolanda has bounced. He reviews the trust account records, and immediately writes his own check to the trust account to cover the \$500 expert witness fee. Charlie reviews Yolanda's case file, and notices Allen's intake interview includes the statements that she will hurt Zelda if she gets a chance, and that it is only fair that she keep the stolen property because she had been cheated by the snowmobile's former owner. Charlie then reviews Zelda's case file, and sees the abuse order has been served on Yolanda.

- 1. Discuss and analyze Allen's obligations under the Vermont Rules of Professional Conduct. Has he complied with them? What steps, if any, should he now take?
- 2. Discuss and analyze Barbara's obligations under the Vermont Rules of Professional Conduct. Has she complied with them? What steps, if any, should she now take?
- 3. Discuss and analyze Charlie's obligations under the Vermont Rules of Professional Conduct. Has he complied with them? What steps, if any, should he now take?

QUESTION V - February 2010

Peter dreamed of moving to Vermont to start an organic farm. In January 2009 Peter found an internet listing for Dana's property in Quaintsborough, Vt.:

Enjoy country life away from the trappings of modernity. 220 acres with classic farm house (furnished with 100 yr+ antique furniture), two barns, two silos. Fields perfect for organic cultivation; property includes hillside w/ pine, spruce, other evergreens. Some development restrictions. Must close by April 1: \$500,000. Call Barry's Brokerage Firm, 802 888-3333.

The listing included pictures of rolling fields, a steep hillside, an old farmhouse, red barns with white trim, tall grey silos, and several pieces of antique furniture. Intrigued, Peter called Barry and arranged to visit the property in March 2009. Dana was not present at the visit.

The visit generally met Peter's expectations; however, Peter asked Barry about a wind turbine, roughly 80' tall, situated at the top of the hill. Barry was not sure about the turbine, and suggested that Peter inquire with Dana. Peter also asked Barry about antennas attached near the top of one of the silos. Barry remarked, "Oh, yes: Cellco pays Dana \$1,000 a month for renting the silo space - sweet deal for you, my friend!"

Immediately following the visit, Peter signed and delivered a purchase and sale agreement ("P&S") prepared by Barry for Dana and paid a deposit of \$50,000. Dana never signed the P&S. The P&S stated that Dana would provide a warranty deed and a bill of sale for the furniture by April 1, provided that a wire for the remaining \$450,000 was received by noon, with time being of the essence. The P&S contained an integration clause and a statement that the conveyance would be made "subject to restrictions and encumbrances of record." Peter never followed up

with Dana regarding the wind turbine or the antennas, and never obtained a title report. Peter's bank obtained appraisals stating the value of the real property at \$670,000 (based in part of the revenue stream from the antennas), and the antique furniture at \$30,000.

On April 1, 2009, Peter's bank did not make the wire transfer until 3:00 pm. Nevertheless, by noon that day, Barry had delivered to Peter the fully executed warranty deed and bill of sale from Dana. The next day, Peter received the following:

(a) A registered letter from WindCo, Inc. stating its intent to exercise an option to develop up to twenty 450-foot wind turbines on 40 acres of Dana's property, based on a development agreement with Dana's predecessor in interest. The agreement was recorded in the Quaintsborough Land Records. The notice includes a map showing most of the forested hillside (not the fields) reserved for turbines.

(b) A letter from Dana explaining Cellco's agreement to continue paying \$1,000 per month rent directly to Dana, all pursuant to a longstanding oral agreement between Dana and Cellco regarding use of the silo for antennas.

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1. Peter has asked you to analyze his legal options.
2. Does Peter have a claim for breach of contract against Dana? Discuss.
3. Does Peter have a basis for rescinding the contract? Discuss obstacles in seeking to rescind.
4. Can Peter acquire the furniture without also taking the land? Explain.
5. In light of the oral arrangement between Dana and Cellco, explain what rights Peter has (if any) with respect to the revenue stream from Cellco's use of the silo.

QUESTION VI - February 2010

Dr. Dentist practices dentistry in Smalltown, Vermont. She holds a Vermont license to practice dentistry. Three patients of Dr. Dentist have filed complaints with the Secretary of State's Office of Professional Regulation. For dentists, professional conduct complaints are handled by the Board of Dental Examiners, which is associated with the Office of Professional Regulation.

The three patients claim that a dental hygienist employed by Dr. Dentist performed complex dental procedures on them, including oral surgery. If Dr. Dentist has permitted her hygienist to perform these procedures as alleged by the patients, she has violated the rules of professional conduct for dentists, and her license is subject to revocation.

An investigator from the Office of Professional Regulation met with each of the three patients. The patients do not know each other, and filed their complaints independently. They gave similar descriptions of procedures performed by the dental hygienist. The investigator found the patients highly credible. The investigator's supervising attorney concluded that, based on this evidence, the Office of Professional Regulation should seek to have Dr. Dentist's license revoked by the Board of Dental Examiners.

The Board's proceedings are governed by the Vermont Administrative Procedure Act. Assume for purposes of this question that the Board has no administrative rules that govern its procedures separate from the Vermont Administrative Procedure Act.

- 1. What type of notice must be provided to Dr. Dentist before the Board can initiate proceedings to revoke her license? Discuss.
- 2. What type of proceeding must the Board hold to decide whether Dr. Dentist's license should be revoked? Discuss the procedural requirements for such a proceeding.
- 3. Do the Vermont Rules of Evidence apply in this proceeding? Discuss.
- 4. Does the Board of Dental Examiners have the power to prevent Dr. Dentist from practicing during the pendency of the administrative proceeding? If so, what process, if any, must be afforded to Dr. Dentist? Discuss.

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